IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2848 OF 2006

Shiv Mandir Trust & 6 Ors. ... Petitioners

Vs.

The Municipal Corporation of Gr. Bombay. ... Respondents

Mr. Indu Prakash i/b Mr. C.K. Tripathi for the petitioners.

Ms. P.A. Purandare for the B.M.C.

CORAM : SMT. RANJANA DESAI &
DR.D.Y. CHANDRACHUD, JJ.

DATED : OCTOBER 12, 2007.

P.C.:-

1. We have heard learned counsel appearing for the parties.

2. The grievance of the petitioners is that the respondents are not justified in initiating action of demolition of the structure in respect of which the acquisition has lapsed long back. Our attention has been drawn by learned counsel for the respondents to the affidavit of Mr. Baburao R. More, the Assistant Engineer

(Maintenance) of the respondent-Corporation. Paragraphs 5(c), 5 (d) and 5(e) of the said affidavit reads thus:

> *"5(c).I say that by virtue of sanctioned Town Planning Scheme III, Borivli (West), rights of owner of Original Plot No.269 bearing C.T.S. No.103 B are extinguished and the owner of Original Plot No.269 has already been given Final Plot and the Arbitrator appointed by the State Government for implementation of the said scheme has settled their rights while finalizing Town Planning Scheme. I say that hence the Petitioner has no right over the C.T.S. No. 103B of Borivli village and the same vest with these respondents.*
>
> *5(d) I say that Final Plot No.449 of Town Planning Scheme III is reserved for public purpose of fire brigade and these respondents have put up fire station in the part portion of the plot and the remaining portion of the land is required for expansion of fire brigade activity.*
>
> *5(e) I say that notice temple is said to be managed by the predecessors of the trust as shed. I say that however the Petitioners have not produced any documentary evidence to prove authorization of the structure / temple. I say that the said temple structure is being located on the public place. These respondents have rightly given notice to the Petitioners to demolish the said temple structure pursuant to the direction of the Hon' blCourt passed in Public Interest Litigation. I say that the rights of original owner / predecessors of trustees are already settled by adequately compensating the owner in terms of distribution of plot to them by the Arbitrator in lieu of original holding as well as*

awarding compensation of Rs.51,436.65/- after adjusting payable dues. I say that as per provisions of MRTP Act all rights of owner of Original plot are extinguished from the date when Town Planning Scheme takes effect. I say that in the present case, Town Planning Scheme has been finalized by the Government and came into effect from 3/10/1995."

3. In view of this affidavit, the present petition cannot be entertained. We are informed by the petitioners' counsel that the suit filed by the petitioners is pending before the City Civil Court at Bombay. Needless to say that the City Civil Court at Bombay shall dispose it of on its own merits and in accordance with law.

4. The petition is disposed of.

[SMT. RANJANA DESAI, J.]

[DR. D.Y.CHANDRACHUD, J.]